Supreme Court, U. S.
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IN THE

# Supreme Court of the United States

SEPTEMBER TERM, 1974

**No. 73-6935**

MARCEL YOUAKIM and LINDA YOUAKIM, individually and as foster parents, TIMOTHY ROBERTSON, a minor, by his sister and next friend LINDA YOUAKIM, MARY LOU ROBERTSON, a minor, by her sister and next friend LINDA YOUAKIM, LARRY ROBERTSON, a minor, by his sister and next friend LINDA YOUAKIM, and SHERRY ROBERTSON, a minor, by her sister and next friend LINDA YOUAKIM, and all others similarly situated,

*Plaintiffs-Appellants,*

*vs.*

JEROME MILLER, individually and as Director of the DEPARTMENT OF CHILDREN AND FAMILY SERVICES of the STATE OF ILLINOIS,

*Defendants-Appellees.*

## MOTION TO DISMISS, OR IN THE ALTERNATIVE TO AFFIRM

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
160 North La Salle Street, Suite 900,
Chicago, Illinois 60601 (793-3500),
*Attorney for Defendants-Appellees.*

FRED F. HERZOG,
First Assistant Attorney General,
PAUL J. BARGIEL,
Assistant Attorney General,
160 North La Salle Street, Suite 800,
Chicago, Illinois 60601 (793-5635),
*Of Counsel.*

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*Plaintiffs-Appellants,*

*vs.*

JEROME MILLER, individually and as Director of the DEPARTMENT OF CHILDREN AND FAMILY SERVICES of the STATE OF ILLINOIS,

*Defendants-Appellees.*

## MOTION TO DISMISS, OR IN THE ALTERNATIVE TO AFFIRM

The appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, respectfully move this Honorable Court to dismiss the appeal herein or in the alternative, to affirm the judgment of the United States District Court for the Northern District of Illinois, Eastern Division, on the grounds that the appeal fails to present a substantial question for adjudication and that the question presented is so insubstantial as not to warrant further argument.

## OPINION BELOW

The opinion of the United States District Court for the Northern District of Illinois, Eastern Division, is reported at 374 F. Supp. 1204 (1974), and is reproduced in Appendix A of appellant's jurisdictional statement.

## JURISDICTION

These proceedings were instituted when the appellants filed a class action in the United State District Court for the Northern District of Illinois, Eastern Division, pursuant to 28 U.S.C. §§ 1343 (3), (4), 1281, and 1284. Appellants sought injunctive relief in accordance with their claim under the Civil Rights Act (42 U.S.C. § 1983), contending that the foster home provisions of the Illinois Child Car Act, Ill. Rev. Stat., 1971, ch. 23, §§ 2212.05, 2212.17 and 5005 were unconstitutional.

The three-judge district court convened to hear this matter granted defendant-appellees' Motion to Dismiss the action on February 28, 1974. Plaintiffs filed their Notice of Appeal on April 23, 1974.

Appellants have invoked the jurisdiction of this Court to review the decision of the three-judge district court by virtue of 28 U.S.C. §§ 1253 and 2281.



## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Amendment XIV;
Ill. Rev. Stat. (1971), ch. 23, § 2212.05;
Ill. Rev. Stat. (1971), ch. 23, § 2212.17;
Ill. Rev. Stat. (1971), ch. 23, § 5005;
Ill. Rev. Stat. (1971), ch. 23, § 4-1.2;
42 U.S.C. § 601;
42 U.S.C. § 603 (a) (1) (B);
42 U.S.C. § 606;
42 U.S.C. § 608;
45 C.F.R. § 233.10;
45 C.F.R. § 233.110.

## ARGUMENT

### THE APPEAL IN THE PRESENT CASE SHOULD BE DISMISSED FOR FAILURE TO PRESENT A SUBSTANTIAL FEDERAL QUESTION OR, IN THE ALTERNATIVE, THE DECISION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, SHOULD BE SUMMARILY AFFIRMED BECAUSE THE QUESTION PRESENTED IS SO INSUBSTANTIAL AS NOT TO REQUIRE FURTHER ARGUMENT.

In attempting to argue the merits of the present cause before this Court, appellants in effect seek to have this Court pass judgment on the wisdom of the Illinois State Legislature. To better understand this contention, and to manifest the failure of appellants to present a substantial federal question, a discussion of the challenged foster care program is necessary.

It is important to note at the outset that the challenged sections of the Illinois Child Care Act pertain to the regulation and licensing of facilities for child care and have no bearing on, or in any way determine, the policy of the State in granting or refusing foster care subsidy.

Appellants allege that the State of Illinois through the Department of Children and Family Services unlawfully discriminates against persons caring for foster children related to them by not subsidizing them at a rate equal to that which foster parents of unrelated children receive. While it is admitted that the State of Illinois has in fact established a different rate structure for payments



to relatives and non-relatives, the basis for this policy is unrelated to §§ 2212.05 and 2212.17 of the Child Care Act which appellants had requested the District Court to declare unconstitutional.

The Child Care Act does not constitute the legal basis for the State's policy in regards to payment of relatives. Within the State of Illinois, child welfare programs are administered by both the Department of Public Aid and the Department of Children and Family Services. Each of the Departments receives substantial federal funding to administer these programs and is governed by the Social Security Act (U.S.C. Title 42 § 601 et seq.) as well as the Rules and Regulations of the Department of Health, Education and Welfare (H.E.W.). The Department of Public Aid administers the Aid to Families with Dependent Children Program (A.F.D.C.) for parents and relatives caring for children in their homes, as defined by U.S.C. Title 42 § 606 (a), while the Department of Children and Family Services, through an interagency agreement with the Department of Public Aid, administers the smaller Aid to Families with Dependent Children-Foster Care Program (A.F.D.C.-F.C.) governed by U.S. Title 42 § 608 and 45 C.F.R. 233.110. Under the existing Illinois State Welfare plan, all children removed from their homes and placed under the guardianship of the State are eligible for A.F.D.C. payments based on the eligibility criteria of the home from which they were removed. This remains true even if such children are placed in the homes of relatives. As defined in U.S.C. Title 42 § 606 (a), they would still be eligible for payment under the A.F.D.C. program. However, if they are placed with strangers, the higher A.F.D.C.-F.C. foster care rate would be allowed. In Illinois, the average A.F.D.C. rate is approximately $63.00

per child per month, while the average foster care rate is $105.00 per child per month. The appellants and the class they represent are eligible, regardless of their financial circumstances, to receive that $63.00 payment. They are not eligible for the higher foster care rate, however, unless the relatives can show a need for such payment. (Illinois Department of Children and Family Services Placement Manual "Placement with Relatives," pp. 95-97, July, 1972—Appendix E of Appellant's Jurisdictional Statement). The Department is presently paying approximately 140 relatives the higher rate. It is a fact that all relatives are not eligible for this higher foster care rate which appellants contend constitutes invidious discrimination.

As outlined above, the State of Illinois' policy is based on its interpretations of the Social Security Act and as determined by H.E.W., and its desire to rationally care for the needy children of the State within the limited resources available for such care. The sections of the Child Care Act cited by appellants have no relevancy to the issue before this Court. Nothing in the Social Security Act or the Illinois Public Aid Code by which the Department of Children and Family Services administers A.F.D.C.-F.C., makes licensing a condition precedent to payment. The applicable sections requiring licensing *or approval* by the State Agency, are as follows:

Title 42 § 608 (in applicable part) reads as follows:

> For purposes of this Section, the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated *or has been approved, by* the agency of such State responsible for licensing homes of this type, *as meeting the standards established for such licensing;* and the



> term "child-care institution" means a non-profit private child-care institution which is licensed by the State in which it is situated *or has been approved,* by the agency of such State responsible for licensing *or approval* of institutions of this type, *as meeting the standards established for such licensing.* (Emphasis added)

Illinois Public Aid Code, Ill. Rev. Stat. 1971, Ch. 23, § 4-1.2:

> Living Arrangements — Parents — Relatives — Foster Care.) The child or children must (1) be living with his or their father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, or other relative approved by the Illinois Department, in a place of residence maintained by one or more of such relatives as his or their own home, or (2) have been (a) removed from the home of the parents or other relatives by judicial order under the "Juvenile Court Act", approved August 5, 1965, as amended, (b) placed under the guardianship of a county superintendent of public aid or the principal administrative officer in the Division of Child Welfare of the Department of Children and Family Services, and (c) under such guardianship, or other guardianship authorized prior to the effective date of this 1969 Amendatory Act, placed in a foster family home or child care institution licensed pursuant to the "Child Care Act", approved July 10, 1957, as amended *or approved by that Department as meeting standards established for licensing under the Act.* A child so placed in foster care who was not receiving aid under this Article in or for the month in which the court proceedings leading to that placement were initiated may qualify only if he lived in the home of his parents or other relatives at the time the proceedings were initiated, or within 6 months prior to the month of

initiation, and would have received aid in and for that month if application had been made therefor. (Emphasis added)

Thus, it is clearly seen that the challenged sections of the Illinois Child Care Act are not determinative regarding any foster care payments. What the Act states is that persons related to children in their care under state guardianship are simply not subject to licensing, only to being approved as meeting standards for licensing. The Department of Children and Family Services does, in fact, approve many such homes; there are presently approximately 1500 families in this category caring for children under state guardianship within the State of Illinois. The Child Care Act does not control payment; it is an Act which has the purpose of regulating the quality of care children receive outside their own home. The legislature in enacting the Child Care Act, intended that homes caring for relatives' children did not require public monitoring. It was for this reason, and not any reason related to payment, that relatives' homes were excluded from licensing.

With this perspective in mind, it becomes clear that no substantial federal question is here presented.

In *Equitable Life Assurance Society of the U.S.* v. *Brown,* 187 U.S. 308, 311, 47 L. Ed. 190, 192 (1902), this Court said:

> . . . [T]he doctrine thus declared is, that although, in considering a motion to dismiss, it be found that a question adequate, abstractly considered, to confer jurisdiction was raised, if it likewise appear that such question is wholly formal, is so absolutely devoid of merit as to be frivolous, *or has been so explicitly foreclosed by a decision or decisions of this court as to leave no room for real controversy,* the motion to dismiss will prevail. (Emphasis added).



See also, *Missouri Pacific Railway Co.* v. *Castle,* 224 U.S. 541, 56 L. ed. 875, 878 (1912). (Motion to Affirm).

It is respectfully submitted that the constitutional questions involving public welfare assistance programs have been so explicitly foreclosed by the decisions of this Court, as to leave no room for real controversy, and that appellees' motion to dismiss or in the alternative to affirm, should, therefore, be allowed. *Jefferson* v. *Hackney,* 406 U.S. 535, 32 L. ed. 2d 285 (1972); *Dandridge* v. *Williams,* 397 U.S. 471, 25 L. ed. 2d 491 (1970); *Ramos* v. *Montgomery,* 313 F. Supp. 1179 (1970), aff'd 400 U.S. 1003, 27 L. ed. 2d 618 (1971).

**A.**

**The Illinois System Of Clarifying Assistance Based On Relationships Is A Rational System For Distributing Limited Welfare Funds And For Promoting The Policies Of The State.**

In determining the constitutionality of the Child Care Act's application to appellants, there is an established proposition that the "prohibition of the Equal Protection Clause goes no further than the invidious discrimination." *Williamson* v. *Lee Optical of Oklahoma, Inc.,* 348 U.S. 483, 489, 99 L. ed. 563, 573 (1955). The rules for testing discrimination have been summarized as follows:

> 1. The equal protection clause of the 14th Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary.

> 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.

*Lindsey* v. *National Carbonic Gas Co.*, 220 U.S. 61, 78-79, 55 L. ed. 369, 377 (1910) and the cases cited therein. Therefore, for the statutory distinction between related and unrelated foster parents to be constitutional, it need only be based on differences that are reasonably related to the purposes of the Child Care Act. *Morey* v. *Doud*, 354 U.S. 457, 1 L. ed. 2d 1485 (1957).

In reiterating the tests to be applied in these types of cases and affirming the principles of the above cited cases, this Court in *Dandridge* v. *Williams*, 397 U.S. 471 at 487, 25 L. ed. 2d 491 at 503 (1970), strongly stated the caution and restraint to be exercised in second-guessing a state legislature:

> We do not decide today that the Maryland regulation is wise, that it best fulfills the relevant social and economic objectives that Maryland might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this



> Court. The Constitution may impose certain procedural safeguards upon systems of welfare administration, Goldberg v. Kelly, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287. But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients. Cf. Charles C. Steward Mach. Co. v. Davis, 301 U.S. 548, 584-585, 57 S. Ct. 883, 889-890, 81 L. Ed 1279; Helvering v. Davis, 301 U.S. 619, 644, 57 S. Ct. 904, 909, 81 L. Ed. 1307.

See also, *Jefferson* v. *Hackney*, 406 U.S. 535, 32 L. ed. 2d 285 (1972).

The District Court accurately applied these principles and found several rational bases for the challenged classifications. *Youakim* v. *Miller*, 374 F. Supp. 1204 (1974). (reproduced in appellant's jurisdictional statement—Appendix A). Several more could be proffered but to do so would be unnecessarily burdensome to the disposition of this motion. Further, the District Court refused to judge the wisdom of the legislative scheme as was and is requested by appellants. The crux of the appellants' jurisdictional statement (pp. 7, 11) is that they are prepared to refute the wisdom of the legislature and prove that a better scheme could be devised. Instead of plainly disclosing that the classification challenged is arbitrary, as is required of them, appellants' disclosures tend to produce the belief that it rests upon a reasonable basis. This kind of argument certainly does not present a substantial federal question. Rather, it represents an attempt by appellants to have this Court engage in the exercise of a judicial function from which it has repeatedly and categorically refrained.

In their attempt to show that the question presented is substantial, appellants cite *Williams* v. *Wohlgemuth*, 366 F. Supp. 541 (W.D. Penn. 1973), aff'd. No. 73-1188, 42 U.S.L.W. 3551, as the "mirror image" of the case here presented and decided subsequent to the district court decision herein on appeal. There exists a fundamental factual distinction between that case and the case presented here that negates its applicability. In *Williams*, the regulations in question created a conclusive presumption that such persons in the plaintiff's class (unrelated adults not receiving assistance) were not eligible for general assistance, regardless of need. The plaintiff therein did not receive public assistance and by virtue of that fact alone the minor was refused any assistance. Therefore, public assistance was based on the status of the substitute parent and no conideration was given to the need of the minor. Under the Illinois State Welfare plan, all children removed from their homes are eligible for payment based on the eligibility criteria of the home from which they were removed. Therefore, it is the status and needs of the child that are the controlling factors in determining assistance and not the status of the substitute parent. Furthermore, no conclusive presumption operates in Illinois to deprive any child removed from his natural home of assistance. Rather, all such children are eligible for AFDC payments and are eligible for even further assistance if a need is present. Therefore, the invidious discrimination the Court found in *Williams* is totally absent from the facts and case presented here.



**B.**

**The Illinois System Of Classifying Assistance Based On Relationship Is Consistent With The Social Security Act.**

In administering the various acts pertaining to public aid and welfare, the State of Illinois has in effect created three classifications for welfare payments to children. These are (1) children in their own homes; (2) children in the home of relatives as defined in U.S.C. Title 42 § 606 (a); and (3) children in the home of strangers.

The thrust of appellants' argument here is that the challenged scheme of classification conflicts with the stated policies of the United States and of the State of Illinois to promote and strengthen the family unit wherever possible.

U.S.C. Title 42 § 601 provides in pertinent part:

> For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each state to furnish financial assistance and rehabilitation and other services, *as far as practicable under the conditions in such State,* to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives *to attain or retain capability for the maximum self-support and personal independence* consistent with the maintenance of continuing parental care and protection . . . (Emphasis added).

It is a legitimate interest of the State of Illinois, through the Department of Children and Family Services and the Administrator of this Act, and within the precepts of State and Federal statutory directives, to pro-

mote and seek the independence of families of whatever type from reliance on the State for support.

The encouragement of self-sufficiency is the object of every type of assistance program. This is not only to preserve the integrity of the State fiscal structure, which is a legitimate state interest, *Dandridge* v. *Williams*, 397 U.S. 471, 25 L. ed. 2d 491 (1970); 45 C.F.R. § 233.10, but also, and primarily for the benefit of families of a related nature, to attain and sustain a proper family structure so that the family unit should as much as possible be relieved from dependence on State support.

This interest in maintaining the independence of families is reflected in the Children and Family Services Act, Ill. Rev. Stat. 1971, ch. 23, § 5005 (2b) (d), which reads in pertinent part:

> The Department shall strive concerning provisions for day care centers to have an emphasis on services to children of recipients of public assistance where such service will allow training or employment of the parent toward achieving the goal of independence, and the care of children from families in stress and crisis whose members potentially may become or are in danger of becoming non-productive and dependent.

Hence, one of the primary interests of the Act is to promote the self-sufficiency of families and to have the State encourage the promotion of the independence of these families.

Nowhere in the Federal or State statutes is there a bar to payment to foster parents of related children. Nor is there provision in any of the statutes which denies the right of the pertinent State agency to promote the public interest, as visualized and perceived by the State, by providing for a different payment plan. Appellants ob-



ject to this difference, however, the statutes cited in support of their position destroy the foundation of their objection. In every interest cited, and in every guiding principle contained in U.S.C. Title 42, the Children and Family Services Act and the Juvenile Court Act, under which appellees must operate, the legislative intent clearly indicates that children ought to be placed, when their return to their natural home is rendered impossible, in the home of a relative, and only thereafter in the home of a stranger. This is *prima facie* evidence that the law considers relatives of a child on a nearly equal basis with natural parents. Hence, respecting payments, the State treats children in their own home and in the home of relatives equally except that if the relative home needs extra monetary resources to maintain the placement, payment will be made (I.D.C.F.S. Placement Manual, "Payment to Relatives" p. 97. See also 45 C.F.R. 233.10).

This policy is not inconsistent with the Social Security Act, but, as a matter of fact, is reflected in the Act. The definition of dependent child, U.S.C. Title 42 § 606 (a), places relatives in the same class and category as parents. Furthermore, the policy of placing relatives in the same class with parents is reinforced by U.S.C. Title 42 § 233.110 (a) (2) 111 (1972), which requires the Department to periodically review its casework plan for the purposes of *returning the child to the home from which it was removed or to prepare the child for placement with another relative.* This serves primarily to emphasize the fact that the Federal government recognizes the substantial equality of parents and relatives for the purpose of child care. The Department of Children and Family Services surpasses the mandate of the Social Security Act by paying relatives who need more money than is af-

forded by the A.F.D.C. rate and who can demonstrate this need.

The case of *Ramos* v. *Montgomery,* 331 F. Supp. 1179 (1970), aff'd. 400 U.S. 1003, 27 L. ed. 2d 618 (1971), though based on slightly different facts serves to foreclose controversy in this area. It not only affirmatively draws a distinguishing line between natural and foster parents but upholds the basis of rationality in such distinction, as is presented here. In the *Ramos* case, the plaintiff, a welfare mother, challenged the fact that her A.F.D.C. grant was less than the grant which could have been awarded a foster parent for the same child. The Court held that this was a rational classification and therefore, not discriminatory. The only factual distinction between the *Ramos* case and the present one is that a relative, rather than a parent was challenging the distinction. Since the Social Security Act itself and the Children and Family Services Act treat relatives and parents on an equal basis the *Ramos* case is sound precedent. Therefore the question presented, having been previously decided adversely to appellants, lacks the basic criterion of a substantial federal question for review. *Equitable Life Assurance Society of the U.S.* v. *Brown,* 187 U.S. 308, 47 L. Ed. 190 (1902).



## CONCLUSION

For all these reasons appellees respectfully submit that the present appeal does not present a substantial federal question for adjudication and that the question upon which this cause is presented is so insubstantial as not to require any further argument. Appellees, therefore, respectfully move this Honorable Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in this cause by the United States District Court for the Northern District of Illinois, Eastern Division.

Respectfully submitted,

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,
160 North La Salle Street, Suite 900,
Chicago, Illinois 60601 (793-3500),
*Attorney for Defendants-Appellees.*

FRED F. HERZOG,
First Assistant Attorney General,

PAUL J. BARGIEL, *
Assistant Attorney General,
160 North La Salle Street, Suite 800,
Chicago, Illinois 60601, 793-2528,
*Of Counsel.*

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* Mr. Bargiel was assisted in the preparation of this Motion by Jim E. Lavine, J.D. I.I.T.-Chicago-Kent College of Law.

# APPENDIX

## APPENDIX



**§ 606. Definitions**

When used in this part—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment.

(b) The term "aid to families with dependent children" means money payments with respect to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of a dependent child or dependent children, and includes (1) money payments or medical care or any type of remedial care recognized under State law to meet the needs of the relative with whom any dependent child is living (and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent

or is a dependent child under section 607 of this title), and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living, and the needs of any other individual living in the same home if such needs are taken into account in making the determination under section 602(a)(7) of this title) which do not meet the preceding requirements of this subsection, but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child or relative, or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual but only with respect to a State whose State plan approved under section 602 of the title includes provision for—

(A) determination by the State agency that the relative of the child with respect to whom such payments are made has such inability to manage funds that making payments to him would be contrary to the welfare of the child and, therefore, it is necessary to provide such aid with respect to such child and relative through payments described in this clause (2);

(B) undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family;

(C) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of



a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that the need for such payments is continuing, or is likely to continue, beyond a period specified by the Secretary;

(D) aid in the form of foster home care in behalf of children described in section 608(a) of this title; and

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made;

(c) The term "relative with whom any dependent child is living" means the individual who is one of the relatives specified in subsection (a) of this section and with whom such child is living (within the meaning of such subsection) in a place of residence maintained by such individual (himself or together with any one or more of the other relatives so specified) as his (or their) own home.

(d) The term "family services" means services to a family or any member thereof for the purpose of preserving, rehabilitating, reuniting, or strengthening the family, and such other services as will assist members of a family to attain or retain capability for the maximum self-support and personal independence.

(e) (1) The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child under the age of 21 who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a) (1) of this section in a place

of residence maintained by one or more of such relatives as his or their own home, but only where such child is without available resources, the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment—

(A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of the household in which he is living, and

(B) such services as may be specified by the Secretary;

but only with respect to a State whose State plan approved under section 602 of the title includes provision for such assistance.

(2) Emergency assistance as authorized under paragraph (1) may be provided under the conditions specified in such paragraph to migrant workers with families in the State or in such part or parts thereof as the State shall designate. Aug. 14, 1935, c. 531, Title IV, § 406, 49 Stat. 629; Aug.10, 1939, c. 666, Title IV, § 403, 53 Stat. 1380; Aug. 28, 1950, c. 809, Title III, Pt. 2 § 323(a), 64 Stat. 551; Aug. 1, 1956, c. 836, Title III, §§ 321, 322, 351(b), 70 Stat. 850, 855; July 25, 1962, Pub. L. 87-543, Title I, §§ 104(a) (3) (D), 108(a), 109, 152, 156(b), 76 Stat. 185, 189, 190, 206, 207; Oct. 13, 1964, Pub. L. 88-641, § 2(a), 78 Stat. 1042; July 30, 1965, Pub. L. 89-97, Title IV, § 409, 79 Stat. 422; Jan. 2, 1968, Pub. L. 90-248, Title II, §§ 201(f), 206(b), 207(a), 241(b) (5), 81 Stat. 880, 893, 916.